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ABSTRACT

The individual rights of students as revealed in federal court decisions are surveyed and summarized. Following a brief outline of the overall judicial approach, using the Tinker vs. Des Moines Independent School District court case as an example, the document is arranged into two major parts. Part 1 examines compulsory attendance laws, dress and hair codes, laws limiting drugs and alcohol on school grounds, and student rights concerning speech and expression. Part 2 focuses on the legality of common methods of maintaining classroom discipline (corporal punishment, suspension, and expulsion) and also on the liability of school districts, school boards, and school officials. Supporting court cases are cited throughout the article including the following: Pierce vs. Society of Sisters (1925), Ferrell vs. Dallas Independent School District (1908), People vs. Overton (1967), State vs. Steen (1969), Scoville vs. Board of Education of Joliet Township (1970), West Virginia State Board of Education vs. Barnette (1943), Ingraham vs. Wright (1977), Goss vs. Lopez (1975), Monell vs. New York City Department of Social Services (1978), and Wood vs. Strickland (1975). (LH)

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THE U.S. CONSTITUTION IN SCHOOL: THE RIGHTS OF THE STUDENT

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There is no longer any doubt that the local public school is a public and a governmental organization. Not more than two or three decades ago, the local public school was viewed by the school board and local citizens as a predominantly local institution far removed from the presumably lofty heights occupied by the U.S. Constitution and the Supreme Court. Writing about the period 1919-1950, constitutional scholars Kelly, Harbison, and Belz noted that members of minorities seeking to obtain constitutionally protected civil liberties obtained those liberties ".....only by moving to a more congenial community".[1] For good or for ill, those days of predominant local control are gone to be replaced in part by state and federal guidelines, administrative decisions, and rulings of state and federal courts. (1) Certainly Brown vs. Board of Education (1952), and Swann vs. Charlotte-Mecklenburg (402, U.S. 1, 1971) should be cited as examples of cases that have profoundly influenced the course of American public education. The central purpose of this article is to survey and summarize the individual rights of students in their relationship to the school which they attend, as those rights are revealed in federal court decisions. We will not assess the legality of pupil assignment or tracking systems, nor examine the the larger question of the rights of juveniles off school grounds or examine the "privacy" rights of students. (2)

Before passing to a discussion of specific instances in the student rights field, a brief outline of the overall judicial approach, the jurisprudence, as it were, of this often difficult and sensitive area would perhaps be helpful.

This is an area in which some of the most important and fundamental interests of our federal constitutional system are implicated.

On the one hand, there are the individual students' (and sometimes parents') rights as guaranteed under the Constitution and the Bill of Rights (e.g., freedom of expression, of association, the rights to due process and equal protection of the laws, freedom from unreasonable searches and seizures, from cruel and unusual punishment and so forth). Such rights are generally enforced in the federal courts, although state forums may be available. On the other hand, there is the States' interest in regulation for the health, safety, morals, and welfare of its citizenry, emanating from the 10th Amendment and generally referred to as the "police power". Orderly and effective education of youth is a vital component of this interest of each state.

In this case, then, as in most cases of important and frequently conflicting interests of constitutional dimension, the federal courts have attempted to achieve justice by a considered weighing and balancing of the interests themselves and the means used to implement their objectives. Essentially, what is sought is a sort of equilibrium, which allows for the fullest exercise of individual student rights consistent with the paramount public interest in educating youth in an orderly environment conducive to learning. An excellent example of this approach may be found in the famous "Black Armband" case argued before the U.S. Supreme Court in 1968, Tinker vs. Des Moines Independent School District, 393 U.S. 503. Writing for the majority, Justice Abe Fortas stated:

> "First Amendment rights applied in light of the special characteristics of the school environment, are available to teachers and students.

> It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or pression at the schoolhouse gate.....On the other hand, Court has repeatly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities." (p. 506-507)

Ultimately, the balance struck in this case was that school authorities could interfere with students' rights of expression only when they could show a probability of material and substantial disruption of school discipline (the state interest in orderly and effective education) caused by the expression of the student. To avoid frequent repetition of this recent and important doctrine, we will refer to it simply as the "Tinker Test".

One major consequence of this principle of accommodation of competing interests is that there are relatively few hard and fast rules of law for governing a school official's conduct in any given situation. Instead, the law as it is interpreted by court cases tends to be limited to the types of factual settings of the disputes involved. Thus, the relationship between cases, in terms of precedential value may often be open to question. As a practical matter, this often means that there are no easy answers to the question "Is it legal to do this?" Nevertheless, a number of aspects of the student rights mentioned above have become fairly well-defined in American law. For purposes of convenience, we will address the constitutional rights of students under these rubrics: requiring the presence of the student in school, dress codes, drug and alcohol usage on campus, and regulation of student expression.

Then we will focus on the legality of the common methods of maintaining discipline in the classroom: corporal punishment, suspension, and expulsion.

Compulsory Attendance Laws

The Supreme Court has consistently upheld compulsory attendance laws except that parents have a constitutional right to send their children to a private school at their own expense. (Pierce vs. Society of Sisters, 298 U.S. 510, 1925). A New York court has ruled, however, that a pregnant student may drop out of school if that is her preference. (In re Rogers, 234 NYS 2nd, 1972). But she also has a judicially protected right to stay in school if she wishes. If she chooses to stay in school, she can be prohibited from participating in extracurricular activities. (3)

Dress and Hair Codes

Nothing in the Constitution or Supreme Court decisions require a school district to adopt a student dress or hair code. In cases where a school district has adopted a code and that code has been tested, a very considerable split has developed. Some federal courts upheld hair codes while other federal courts overturned them. Since the Supreme Court has not ruled in this matter, a clear ruling upholding hair codes by a 5th Circuit Federal Court of Appeals indicates the constitutionality of hair codes in public schools in the 5th Circuit, which includes Texas, Louisiana, Mississippi, Oklahoma, Georgia, and Florida. Regulations issued by the Department of Health, Education, and Welfare under Title IX of Educational Amendments of 1972 prohibit sex discrimination against any person by a school receiving federal assistance. (34 CFR, part 106.9)

A school district which chooses to impose a dress code must impose a code that does not discriminate on the basis of sex. That is, if hair length is regulated for boys, it must also be regulated for girls. (Ferrell vs. Dallas Independent School District 392 F. 2nd 697, 5th Circuit, 1968).

Drugs and Alcohol

The use of drugs and alcohol on school grounds is not a new problem. However, the use of illicit drugs and alcohol on the school campus appears to be more of a problem than in the past. We will look first to administrative and then to judicial remedies in searching for a permissible solution to these problems.

Some administrative remedies are beyond challenge. For example, creating a closed campus to limit substance abuse by students during the lunch hour is within the purview of the local school district. Searches of student lockers and automobiles parked on school grounds are permissible and illicit drugs discovered in these searches may be used as grounds for a subsequent student discipline; corporal punishment, suspension, or expulsion. (People vs. Overton, 20 N.Y. 2nd 360, 283 N.Y. S. 2nd 22, 229 N.E..2nd 596, 1967). With permission of school officials, police can also search lockers on the school grounds, without fear of violating students' Fourth Amendment Rights, because the courts have ruled that the lockers belong to the school rather than to the student (State vs. Stein, 203 Kansas 638, 1969). A very recent Texas case establishes some limits on the use of dogs to help school personnel ferret out illicit drugs. In June 1982, the Fifth Circuit Court of Appeals in New Orleans heard a case filed by three students against the Moose Creek Independent School District in Baytown.

The court held that dogs could not be used on the school grounds in random searches of students. It is still legal for school officials to use dogs and allow police to use dogs to search school property, including student lockers.

Speech and Expression

Although the First Amendment to the Constitution clearly guarantees freedom of speech, the public school student surrenders a portion of his freedom when he enters the classroom. We must mention that freedom of speech extends far beyond simple oral expression to include dramatic presentations and symbolic acts such as the wearing of armbands.

Tinker vs Des Moines Independent School District, referred to above, involved First Amendment rights of expression on school grounds during school hours. Perhaps because the right involved was so fundamental, the Supreme Court attempted to frame a general rule which we labeled the "Tinker Test".

> "In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no showing that the exercise of the forbidden right would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, the prohibition cannot be sustained." (393 U.S. at 509)

The school administration may also invoke the Tinker rule to censor the contents of the school newspaper or to ban the distribution on school property of a newspaper published by students. But administrators must be prepared to show that if the censored material or banned newspaper had been made available to students, it would have ....."materially and substantially interfered with the requirements of appropriate discipline." (Scoville vs. Board of Education of Joliet Township, 425 F. 2nd, 7th Cir. 1970)

One type of expression has been given special attention by the Supreme Court. A student may not be required to salute the flag or say the Pledge of Allegiance by school authorities (West Virginia State Board of Education vs. Barnette 319 U.S. 624, 1943).

Procedural Limitations

Although school administrators are charged with the maintenance of a creative learning environment, there are some clear legal limitations on the procedures and policies which may be imposed in attempting to achieve those objectives.

Corporal Punishment

Corporal punishment, specifically spanking of students, has been permitted by the Supreme Court.(Ingraham vs. Wright, 430 U.S. 651, 1977) subject to prohibitions imposed by state law or school board policy.[2] However, the punishment must be reasonable and necessary.

Suspensions and Expulsions

In Goss v. Lopez (419 U.S. 565, 1975), the court ruled that a student may be properly suspended for ten days or less if he or she has been given some notice and some kind of hearing. This very informal due process procedure satisfies the requirements of the Fourteenth Amendment, said the court. In contrast, a student who may be suspended for more than ten days or expelled from school must be given a written statement of the charges against him. He is also entitled to a hearing with the school official ultimately responsible for student conduct. He must be permitted to inspect any evidence in the hands of school officials and he must be given the right to present a defense at the hearing. The student also has the right to question any witnesses against him, to receive a written statement of findings of the hearing and, at his own expense, make a record of the hearing itself.

(Sullivan vs. Houston ISD, 307 F. Supplement, 1328-1346, S.D. Tex. 1969)

Liability of School Districts, School Boards, and School Officials

School districts, members of its board, administrators, and individual teachers can be sued for violating a student's constitutional rights. Regarding the school district,the Supreme Court, in Monell vs. New York City Department of Social Services 436 U.S. 658 (1978), held that all political subdivisions of a state, including school districts are "persons" and thus are not clothed with the immunity from suit and liability conferred on the state itself by the 11th Amendment. Jurisdiction to hear these cases exists in both federal and state courts, although generally they are brought in federal court.

A student who feels his constitutional rights have been infringed can name as defendants the school district, all district officials individually (including of course, the board members), the school, all school administrators (principal, vice-principal, counselors, etc.) and teachers depending on the circumstances of his particular case. For the school district or the school board to be held liable, the key question is usually whether the action taken was pursuant to a regulation or policy or custom (express or implied) of the school such that it amounted to an official action. If so, and the court finds the action to have violated the Constitution, the student may recover any damages he can show he suffered from the entity.

Individual liability is more complicated, but the following generalizations summarize the current state of the law. If the individual official is properly performing a mandatory action (doing something that must be done under regulations in a specific way), he will probably be immune from the suit.

This is rather rare, as the conduct of school necessarily involves a great deal of discretion. For actions taken within the individual official's authorized discretion, he is protected by "qualified good-faith immunity". The 1975 Supreme Court case of Wood vs. Strickland. 420 U.S. 308, originally set up a two part test for qualified good faith immunity: the official was unaware that he was violating the student's rights and such lack of awareness was reasonable under the facts; and, the official did not act with a malicious intent to violate the student's rights. (4) Either test provides substantial protection for individual teachers and administrators named as defendants in a suit. It is, of course, particularly difficult to prove malicious intent in a courtroom. A finding that a teacher or administrator is immune from a suit does not make their employer immune from the same suit.

Summary

The student surrenders some portion of his constitutional rights on entering the school house door. When a student asserts that his rights have been violated, the court seeks to balance the student's rights with the legitimate interest of the state in providing an education in an orderly environment conducive to learning. We have summarized the constitutional status of school rules requiring attendance at school, defining appropriate student dress and physical appearance, limiting drugs and alcohol on school grounds, and restricting student speech and expression. Court cases setting the boundaries of discipline permissibly administered at school were surveyed and the liability of individual teachers and administrators for inappropriate actions at school was examined.

Students have more rights in school now than in previous decades and they can file suits against the school district and school authorities as individuals. With only minor exceptions, the power of school officials to limit student rights is confined to the school grounds and must be used solely to maintain an orderly environment conducive to learning. We believe that the local public school still has ample authority to make and enforce rules needed to maintain an acceptable learning atmosphere.

NOTES

1. For an excellent but now outdated overview of federal guidelines and requirements for public schools, see - Working With Your School published by the Texas Advisory Committee of the U.S. Commission on Civil Rights, Feb. 1977, and Alan H. Levine & Faye Cary, The Rights of Students: An American Civil Liberties Union Handbook, New York: Avon Books, 1977 (revised edition).

2. Behavior off school grounds is not normally subject to school discipline. However, a commission of a serious criminal act, including narcotic offenses, provides a basis for expulsion or suspension from school. (Caldwell vs. Camady, 340 F. Supp. 835, N.D. Texas 1972)

3. Efforts to limit the extracurricular activities of an unwed mother who chose to stay in school were unsuccessfully challenged in Perry v. Grenada Separate School District (300 F. Supp. 748 N.D. Miss. 1969) and Ordway v. Harg 323 F. Supp. 1155, D. Mass, 1971). The plaintiffs argued that they were denied equal protection of the law since the school rules were not applied to expectant fathers. See also "Marriage, Pregnancy, and the Right To Go To School" in the Texas Law Review 50 pp. 1196-1296 (1972) and Alvin Independent School District vs. Cooper 404 SW 2nd 76, Texas Civil Appeals, 1966.

4. Harlow v. Fitzgerald, 102 S. Ct. 2727 (1982), and Brewer v. Blackwell, 692 F. 2nd 387 (1982) abandoned the malicious intent test in the contexts of federal executive branch officers and municipal police officers respectively. The Harlow case has been accepted for review by the Supreme Court which may extend the impact of these cases to include public schools.

FOOTNOTES

1. Kelly, Alfred H., Winfred A. Harbison and Herman Balz (1983) THE AMERICAN CONSTITUTION. New York: W.W. Norton & Co., 6th Edition: 524.

2. M. Remmlein and M. Ware, School Law, p. 303.